

DISTRICT OF MAINE

Criminal No. 01-25-P-H

Defendants Brian Goodine and Gary Julien, charged with conspiracy to distribute and possess with intent to distribute cocaine base and possession with intent to distribute and aiding and abetting the possession with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846 and 18 U.S.C. § 2, seek suppression of evidence found in and near the hotel room in which they were arrested on March 19, 2001. Defendant Goodine's Motion to Suppress Evidence ("Goodine Motion") (Docket No. 19) at [4]-[5]; Motion to Suppress and Motion to Join Defendant Goodine's Motion to Suppress Evidence (Docket No. 20) at [1]-[2]. An evidentiary hearing was held before me on July 19, 2001. I recommend that the following findings of fact be adopted and that the motions be denied.

On March 14, 2001 Ricardo King rented Room 206 in the Holiday Inn Express in Saco, Maine. Brian Goodine stayed in that room with King that night and every night thereafter until March 19, 2001. On March 16, 2001, Gary Julien came to the room and spent the night. He left the next day but

returned with a friend, Bertram Leslie, on March 18, 2001. Both Julien and Leslie stayed in the room the night of March 18, 2001. Julien was “just visiting” on both occasions. He brought some clothes with him when he stayed the second time.

The manager of the Holiday Inn Express called the Saco Police Department several times to report that her employees had reported a strong odor of marijuana coming from Room 206 and that the occupants of the room would not allow housekeeping personnel to enter the room. At some point, the Saco police checked the registration numbers of the vehicles used by the occupants of that room and learned that both were rental vehicles. This information was known to the Saco police by 9:30 a.m. on March 19, 2001. Following another call from the manager that afternoon, Detective Sergeant David Loranger of the Saco police decided to visit the room. His intent was to placate the manager. A roller hockey tournament was taking place near the hotel and Loranger expected to find partying college students in the room. He took another plainclothes detective and two uniformed officers with him.

Loranger arrived at the hotel at approximately 2:40 p.m. and took a courtesy key to Room 206 from the manager. Only Rooms 206 and 225 were occupied on the second floor. As the officers approached Room 206 there was a very strong odor of marijuana. Loranger walked to the door of Room 225, which was at the opposite end of the hall from Room 206, and noted that the odor had almost completely dissipated when he reached Room 225. One of the officers put a piece of black tape over the peephole in the door of Room 206. Loranger could hear voices inside the room. He knocked and received no response. He knocked again and announced, “Police.” He then heard rustling noises in the room and the flushing of a toilet. Loranger believed at that point that the occupants of the room were trying to destroy evidence of criminal activity. He tried to use the courtesy key to enter the room, but the internal security lock was engaged, rendering the key useless.

He then knocked and kicked on the door. He knew that the door could not be opened by kicking it. None of the officers had yet drawn their weapons.

After the passage of a total of approximately 45 seconds from the time of the initial knock, Ricardo King opened the door, stepped back and gestured with his hands at his sides in a manner that Loranger perceived as an invitation to enter the room. Loranger saw Goodine and Julien beside an open window at the far end of the room and another male in a corner. None of the occupants of the room made any effort to block the officers' entry. Marijuana smoke was thick inside the room. The occupants of the room were moving around. Out of concern for their safety, the officers drew their weapons upon entering the room and directed the occupants to get down.

On the floor between the two beds in the room Loranger noticed two bags of what he believed to be crack cocaine. He was not able to see this area from the doorway; only after he entered the room did these bags come into plain view. All four occupants of the room were arrested for possession of scheduled drugs, a violation of Maine law. Loranger took King into the bathroom, where King told him that the toilet had been flushed after Loranger knocked because King had been going to the bathroom. Loranger noticed green leafy material and tan paper in the toilet; the paper had plant residue in it. He did not mention the material in the toilet in his written report.

Detective Pellerin, who had accompanied Loranger, directed Loranger's attention to items on the ground below the open window. When Loranger went outside the building, he noticed that the window to Room 206 was the only window that was open on that side of the building. The outside temperature was slightly above the freezing mark. On the ground directly below the window the officers found scales, marijuana, cocaine, razor blades, an ashtray and plates.

Loranger contacted the Maine Drug Enforcement Agency and asked an agent to obtain a search warrant for the room. The room was sealed until the search warrant was received, whereupon it was

searched. Exhibit C to the Government's Objection to Defendants Goodine and Julien's Motions to Suppress ("Objection") (Docket No. 24) is an inventory of the items taken from the room.

II. Discussion

A. Standing

The government initially took the position that neither Goodine nor Julien had standing to object to the search of the hotel room or the area outside the window. Objection at 4-5. At the hearing, the government withdrew this argument with respect to Goodine but pressed it as to Julien.

[I]n order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i.e.*, one that has "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."

Minnesota v. Carter, 525 U.S. 83, 88 (1998), *quoting Rakas v. Illinois*, 439 U.S. 128, 143-44 & n.12 (1978). "The burden of proving a reasonable expectation of privacy lies with the defendant.

The defendant must demonstrate a privacy expectation in both the item seized and the place searched."

United States v. Mancini, 8 F.3d 104, 107 (1st Cir. 1993). A defendant who offers no evidence of personal interest in a hotel room registered to another beyond being present at the time of the search has not met this burden. *United States v. Irizarry*, 673 F.2d 554, 556 (1st Cir. 1982).

Here, the evidence establishes that Julien was a guest in the room registered to King, albeit under an alias, on two nonconsecutive nights, including the one immediately preceding the arrest and search. The only reasonable interpretation of the evidence is that Julien was King's guest in the room. That is sufficient to provide him with a reasonable expectation of privacy in the room and thus with standing to contest the search. *Minnesota v. Olson*, 495 U.S. 91, 98 (1990); *United States v. Carr*, 939 F.2d 1442, 1446 (10th Cir. 1991); *United States v. Brooks*, 1997 WL 327087 (W.D. Va. June 11, 1997), at *2.

B. Probable Cause

The defendants contend that the officers lacked probable cause to enter Room 206 and that their initial search of the room was therefore illegal. Goodine Motion at [2]-[4]. Goodine relies on *Johnson v. United States*, 333 U.S. 10 (1948), a case in which he asserts the facts are “strikingly similar” to those present here, Goodine Motion at [3]. In *Johnson*, police recognized a strong odor of burning opium coming from a particular hotel room. 333 U.S. at 12. They knocked and identified themselves. *Id.* After a slight delay accompanied by some “shuffling or noise” in the room, the defendant opened the door, stepped back, and allowed the police to enter. *Id.* While rejecting the defendant’s contention that odors alone can never provide sufficient evidence to constitute probable cause for a search, *id.* at 13, the Supreme Court held that the search was invalid because the officers were required to obtain a search warrant given the fact that, *inter alia*, “[n]o evidence or contraband was threatened with removal or destruction,” *id.* at 15. The government does not address *Johnson* in its opposition, but does cite both older and more recent case law.

The distinction between the facts in this case and those presented in *Johnson* is a critical one. Here, before the officers entered Room 206, but after they had announced their presence, Loranger heard the toilet flushing. He knew from his training and experience that this was a means frequently used to discard illegal drugs. Coupled with the strong odor of marijuana coming from the room and the sound of movement after the officers had announced their presence, the flushing would lead a reasonable police officer to conclude that evidence or contraband was indeed threatened with removal or destruction. *See United States v. Delguyd*, 542 F.2d 346, 351 (6th Cir. 1976) (rustling noises and flushing of toilet inside apartment after officers announced their identity outside door allows reasonable person to conclude that evidence being destroyed and supplies exigent circumstances to justify warrantless entry). *See also United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991)

(need to invoke exigent circumstances exception to warrant requirement particularly compelling in narcotics cases, because evidence can be so quickly destroyed).

The defendants also argue that there was no probable cause for issuance of the search warrant because it was based on an affidavit that reported that drugs had been found in Room 206 during the initial entry. Motion at [4]-[5]. Because I conclude that the cocaine on the floor between the beds in Room 206 was not discovered in the course of an illegal search or arrest, this contention must also fail.

III. Conclusion

For the foregoing reasons, I recommend that the defendants' motions to suppress the evidence taken from Room 206 in the Saco Holiday Inn Express and from the ground¹ outside the open window in that room be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Date this 23rd day of July, 2001.

¹ The defendants do not assert a right to have the evidence seized from the ground below the open window suppressed on any basis other than that argued with regard to the entry without a search warrant into Room 206 itself.

David M. Cohen
United States Magistrate Judge

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